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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/062,680	02/01/2002	Paul R. Jarko	1992-A	2184
7590	12/24/2003		EXAMINER	
Joseph A. Sebolt SAND & SEBOLT Aegis Tower 4940 Munson St. NW, Suite 1100 Canton, OH 44718			VANAMAN, FRANK BENNETT	
			ART UNIT	PAPER NUMBER
			3618	
			DATE MAILED: 12/24/2003	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/062,680	JARKO ET AL.	
	Examiner Frank Vanaman	Art Unit 3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 15 September 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-13 and 16-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 1-3, 8, 10, 12 and 17-20 is/are allowed.
- 6) Claim(s) 4, 6, 7, 13, 16 and 21-29 is/are rejected.
- 7) Claim(s) 5, 9, 11 and 30-32 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)           | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____ .                                   |

### **Status of Application**

1. Applicant's amendment, filed 9/15/03, has been entered in the application. Claims 1-13 and 16-32 are pending, claims 14 ad 15 having been canceled.

### **Claim Rejections - 35 USC § 102**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 21, 22, 24 and 29 are rejected under 35 U.S.C. 102(e) as being anticipated by Perelli et al. (US 6,497,423). Perelli et al. teach a cart in combination with plural rigid rectangular containers (188, 30), including an upstanding frame (18, 20, 22) which forms an inverted U shape (legs 18, 20, bridging portion 26), plural wheels (14a-d), plural shelves (24, 28) for supporting the containers in a vertical relationship, where they are horizontally placed, and having all sides including the front sides open (i.e., unenclosed, or exposed) to the breadth claimed, and a lid (32) having a squared-off dome shape, pivotally connected to the cart, for covering the uppermost container (30) the lid having a shape complementary to the container (figure 5) and including latching elements (178, 180) for engaging a portion of the container (e.g., 157), clipping over a rim (154) thereof and forming a closure for it, the shelves and containers being made from a molded plastic material.

### **Claim Rejections - 35 USC § 103**

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Perelli et al. (US 6,497,423). Perelli et al. teach a cart as described above, but which lacks a container structure wherein the containers have a bottom wall wherein a plurality of side-walls taper inwardly from the top to the bottom wall. Container structure characterized by inwardly tapering sidewalls is very well known in the containment arts, and as such, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the containers used with the cart of Perelli et al. with a structure

having well known inwardly tapering side walls for the purpose of allowing a great-as-possible open end size, and to allow multiple containers to be vertically nested when in storage.

5. Claims 13 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perelli et al. in view of Hayes (US 4,821,903). The reference of Perelli et al. is discussed above and fails to teach the frame portion as being formed from a tubular metal member. Hayes teaches a combination cart and bin arrangement, wherein plastic bins (35) are supported on a cart (10) having an inverted U-shaped frame (11, 12) made from a tubular metal element. It would have been obvious to one of ordinary skill in the art at the time of the invention to make the frame portion of the cart of Perelli et al. from a tubular metal member as taught by Hayes, for the purpose of increasing its strength.

6. Claims 4, 6, 25, 26, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perelli et al. in view of Barnes (US 5,230,282). The reference of Perelli et al. is discussed above and fails to teach a receptacle on the rear frame side, the receptacle being made from a U-shaped metal mesh screen, including first and second sides, a curved bottom, the second side being biased towards the first side by the bottom, with an outwardly curved configuration, including a slot which is configured to receive a cord, a cord holder, and a cutting mechanism. Barnes teaches a receptacle having first (16) and second (23, 25), outwardly projecting sides, a bottom (e.g., 17) which may be U-shaped (col. 3, lines 39-40), the U-shape allowing the second wall to extend in an outwardly curved configuration, the basket further having slots (e.g., between 23, 25) which allows the passage of cord (34- note also figures 4, 5), a cord container (30) which may be provided with a cutter (col. 4, line 43), wherein both the cord container and the basket itself (see col. 4, line 48 and col. 4, lines 2-5) may be made from a mesh material. An outward force on the upper end of the second wall would result in a restoring force being generated which would tend to bias the second side towards the first side to the breadth claimed. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the cart of Perelli et al. with a receptacle and cord dispenser with cutter as taught by Barnes for the purpose of providing a facility to allow small items to be bundled up for disposal.

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As regards claim 27, while the references of Perelli et al. and Barnes fail to specifically teach a particular location for the cord holder, it would have been obvious to one of ordinary skill in the art at the time of the invention to locate the holder in an upper most location with respect to the other containers and basket, and as such, to thusly locate it on the lid, so as to promote easy access to the cord holder and cutter when bundling items.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Perelli et al. in view of Rauschenberger et al. (EP 0 955 224). The reference to Perelli et al. is discussed above and fails to teach the shelves formed with a plurality of holes.

Rauschenberger et al. Teach a cart construction wherein shelves (e.g., 2, 3) are provided with holes (e.g., 17). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the shelves of the cart of Perelli et al. with holes as taught by Rauschenberger et al., for the purpose of providing shelves having a lighter weight.

8. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Perelli et al. in view of Toggweiler (CH 310,381). The reference to Perelli et al. is discussed above and fails to teach the side members as including a plurality of holes for allowing adjustment of the shelves. Toggweiler teaches a mounting scheme wherein shelves (e.g., 25) may be adjustably mounted on two side members (17) of a cart, in an adjustable fashion, through the use of a plurality of holes (20). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a plurality of holes as taught by Toggweiler in the side mounting members of the cart of Perelli et al., for the purpose of allowing the height of any of the shelves to be adjusted to the user's desire, facilitating flexibility in the objects or container which may be accommodated.

#### **Allowable Subject Matter**

9. Claims 1-3, 8, 10, 12, and 17-20 are allowed.

10. Claims 5, 9, 11, and 30-32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### **Response to Comments**

11. Applicant's comments, filed with the amendment, have been carefully considered. Applicant's comments concerning the reference to Pirelli et al. are noted. As regards the plurality of rigid containers, please note that Pirelli et al. include at least two containers to the breadth claimed, and is further designed for use with at least one further container (col. 7, lines 40-50). As regards applicant's addition of the term "open" to describe the shelves, the examiner notes that the shelves taught by Pirelli are "open" to the extent that this limitation is claimed, i.e., they are exposed, or un-enclosed.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the slideable nature of the container support) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

As regards the reference to Barnes, applicant's arguments are not entirely clear, in that the wire construction constitutes a coarse screen to the breadth claimed, and the structure includes a vertical rear wall, a first curved portion a bottom portion, a second curved portion and an outwardly oriented portion—the second side being biased towards a first side by the rigidity of the wire structure (i.e., a force applied to the second side moving it further from the first side would be met with a counterforce urging the second side towards the first side, thus biasing it towards the first side), to the breadth claimed.

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### Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is 703-308-0424. Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is 703-308-1113.

As of May 1, 2003, any response to this action should be mailed to:

Mail Stop \_\_\_\_\_  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450,

Or faxed to one of the following fax servers:

Regular Communications/Amendments: 703-872-9326  
After Final Amendments: 703-872-9327  
Customer Service Communications: 703-872-9325

F. VANAMAN  
Primary Examiner  
Art Unit 3618

  
12/11/03